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FILED

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DEPT. OF REAL ESTATE

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8
9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation Against) No. H-41819 LA
13)
14 NICHOLAS KENT DILLON II;)
15 FLAT FEE GROUP, INC., doing business)
16 as Smart Realty Group; JASON WHITMORE,)
17 Individually and as former designated officer)
18 of Flat Fee Group, Inc.; and)
19 MICHELLE JENNY LIN, individually and as)
20 designated officer of Flat Fee Group, Inc.;) ACCUSATION
21 Respondents.)
22)
23)
24)
25)

26 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the
27 State of California, for cause of Accusation against NICHOLAS KENT DILLON II, FLAT
FEE GROUP, INC., doing business as Smart Realty Group, JASON WHITMORE, individually
and as former designated officer of Flat Fee Group, Inc., and MICHELLE JENNY LIN,
individually and as designated officer of Flat Fee Group, Inc. (sometimes collectively referred
to as "Respondents") alleges as follows:

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ACCUSATION

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1.

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity.

2.

All references to the "Code" are to the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, of the California Code of Regulations.

LICENSE HISTORY

3.

(NICHOLAS KENT DILLON II)

a. Respondent NICHOLAS KENT DILLON II ("DILLON") is presently licensed and/or has license rights under the Code, as a real estate salesperson, Department of Real Estate ("Department") license ID 01991792.

b. The Department originally issued DILLON a salesperson license on November 5, 2015, which is set to expire on November 4, 2023, unless renewed.

c. According to the Department's records to date, DILLON's responsible broker is Realty Masters & Associates (license ID 01927637).

(FLAT FEE GROUP, INC.)

4.

a. Respondent FLAT FEE GROUP, INC. ("FFGI") is presently licensed and/or has license rights under the Code, as a corporate real estate broker, Department license ID 02007172.

b. The Department originally issued FFGI a broker license on June 1, 2016, which is set to expire on May 31, 2024, unless renewed.

c. According to the Department's records to date, FFGI's main office address is 1026 W. Foothill Boulevard, Upland, California.

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1 d. FFGI currently maintains the fictitious business names "Flat Fee Access" and
2 "Smart Realty Group" with the Department.

3 e. FFGI's designated officer from August 14, 2017, to May 22, 2018, was
4 Respondent JASON WHITMORE. Since on or about May 23, 2018, to the present, the
5 designated officer of FFGI has been Respondent MICHELLE JENNY LIN.

6 f. On or about July 28, 2017, in Case No. H-40735 LA, the Real Estate
7 Commissioner ordered FFGI, doing business as Flat Fee Access and as Smart Realty Group, to
8 Desist and Refrain from making false, misleading or deceptive representations with regard to
9 the terms or conditions in their listings of properties on the Multiple Listing Services ("MLS")
10 and from failing to disclose to prospective sellers that the owner of FFGI is also the owner of
11 Arbor One Escrow, Inc., an independent escrow company.

12 (JOHN WHITMORE)

13 5.

14 a. Respondent JOHN WHITMORE ("WHITMORE") is presently licensed
15 and/or has license rights under the Code as a real estate broker, Department license ID
16 01899372.

17 b. The Department originally issued WHITMORE a broker license on February
18 22, 2013, which is set to expire on February 21, 2021, unless renewed.

19 c. WHITMORE was the designated officer for FFGI from August 14, 2017, to
20 May 22, 2018. As designated officer, WHITMORE was responsible for the supervision of the
21 activities conducted on behalf of FFGI by its officers, agents, real estate licensees, and
22 employees pursuant to Section 10159.2 of the Code.

23 (MICHELLE JENNY LIN)

24 6.

25 a. Respondent MICHELLE JENNY LIN ("LIN") is presently licensed and/or
26 has license rights under the Code as a real estate broker, Department license ID 01926224.

1 b. The Department originally issued LIN a broker license on June 19, 2013,
2 which is set to expire on June 18, 2021, unless renewed.

3 d. LIN has been the designated officer for FFGI since May 23, 2018. As
4 designated officer, LIN is responsible for the supervision of the activities conducted on behalf
5 of FFGI by its officers, agents, real estate licensees, and employees pursuant to Section 10159.2
6 of the Code.

7 e. LIN is also the designated officer for corporate real estate brokers Snap
8 Referral, Inc. (license ID 02018238), Deal Funder, Inc (license ID 02064012), and Beverly and
9 Company, Inc (license ID 02078273).

10 f. Since January 2, 2018, LIN has also been a broker associate for Realty
11 Masters & Associates, Inc., the same responsible broker for DILLON.

12 CAUSE FOR ACCUSATION

13 (FIRST DEL AMO ROAD TRANSACTION)

14 7.

15 On or about December 10, 2017, LMD Property, LLC, made an offer of
16 \$490,000.00 to purchase the residential real property located at 24470 Del Amo Road, Ramona,
17 California ("Del Amo property"). LMD Property, LLC, is a California limited liability
18 company (File No. 20153221344), and Respondent DILLON is its Chief Executive Officer.
19 According to the Residential Purchase Agreement dated December 10, 2017, DILLON also
20 listed himself under Realty Masters & Associates as the selling firm (buyer's agent). Licensee
21 John Reeves represented the sellers in the transaction.

22 8.

23 On or about December 21, 2017, DILLON, as an officer of LMD Properties,
24 LLC, signed the Receipt for Reports No. One, which acknowledged that DILLON received,
25 among other reports, the wood destroying pest inspection report prepared by "R-Solution"
26 consisting of nine (9) pages and dated September 6, 2017.

27 ///

R-Solution’s findings and recommendations in Report No. W19325, dated September 6, 2017, for the Del Amo property stated, in part, the following:

General Description: 2-story single family residence, garage, patio cover, vacant. Section I contains items where there is evidence of active infestation, infection of conditions that have resulted in or from infestation of infection. Section II items are conditions deemed likely to lead to infestation or infection but where no visible evidence of such was found...

- Substructure:** Slab
- Stall Shower:** Not Tested/Inspected Only
- Foundations:** Concrete slab/above grade
- Porches – Steps:** Slab
- Abutments:** None noted
- Attic Spaces:** Partially accessible insulated
- Garages:** Partially Accessible

8A (Section I)

FINDINGS: Dry-rot wood members found at time of inspection at garage door jambs as indicated on the diagram.

RECOMMENDATION: Replace dry-rot damaged wood members as necessary with new material and to treat surface fungus as necessary.

- Decks – Patios:** Patio Cover/Accessible
- Other Interior:** Vacant/Partially Accessible

10A (Section II)

FINDINGS: Loose commode noted at upstairs master bathroom.

RECOMMENDATION: Remove commode for further inspection.

- Other Exterior:** Accessible

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10.

Escrow closed on the first sale of the Del Amo property on January 8, 2018.

(SECOND DEL AMO ROAD TRANSACTION)

11.

According to the Residential Listing Agreement dated February 23, 2018, DILLON, as an officer of LMD Properties LLC, entered into an agreement with WHITMORE of FFGI to list the Del Amo property for \$649,000.00. The Listing Agreement was "DocuSigned" by both DILLON and WHITMORE. According to the Listing Agreement, WHITMORE "will charge \$75.00 at the close of escrow" and "[n]o other fees or commissions will be due to listing agent or broker."

12.

On or about that same day, FFGI listed the Del Amo property on the MLS. Under the "Listing" section, it stated, "[s]ubmit all offers to Linda at Linda@smartrealtygroup.com." Under the "Showing Information" section, the contact was DILLON.

Termite Report by "All Phase Termite and Pest" – Spangler Property

13.

In a separate transaction, on February 27, 2018, an offer was made for the property located at 16037 Spangler Peak Road in Ramona, California ("Spangler property"). DILLON, as an officer of LMD Properties, LLC, was the seller of the Spangler property, and was again represented by WHITMORE of FFGI. DILLON ordered a termite inspection for the Spangler property to be conducted by "All Phase Termite and Pest" in Lakeside, California. On or about March 15, 2018, All Phase Termite and Pest conducted a termite inspection, Report No. W8664, of the Spangler property, which stated, in part, the following:

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Ordered by: Realty Master and Associates Nick Dillon

Inspected by: Richard Morgan **State License No.** FR39819

General Description: Single story wood framed stucco single family residence with a tile roof and an attached garage.

Section I contains items where there is evidence of active infestation, infection of conditions that have resulted in or from infestation of infection. Section II items are conditions deemed likely to lead to infestation or infection but where no visible evidence of such was found...

NOTE: This is to certify that the above property is free of active infestation or infection in all visible and accessible areas and meets all FHA/VA requirements. FINDINGS:

CLEAR \$ NO CLEARANCE FEE

- Substructure:** Slab
- Stall Shower:** Prefab
- Foundations:** Slab
- Porches – Steps:** Slab
- Ventilation:** NA
- Abutments:** None
- Attic Spaces:** Partially insulated
- Garages:** Slab
- Decks – Patios:** None
- Other Interior:** See Report
- Other Exterior:** See Report

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19.

On or about May 15, 2018, at 9:35 a.m., Reyes sent a text to DILLON asking for any updates. DILLON responded, "Linda my tc [sic] will call you. She is putting together the final paperwork. We are good to go."

20.

After counter offers were exchanged between the buyers and DILLON, the purchase offer was accepted at \$654,000.00, seller to credit the Buyers \$11,000.00 towards recurring and non-recurring closing costs, and seller to credit buyers \$3,000.00 for VA non-allowable fees. The buyers and DILLON opened escrow with Arbor One Escrow, Inc.

Termite Report by "All State Termite and Pest" – Del Amo Property

21.

On or about May 22, 2018, at 4:17 p.m., Reyes sent an email to Tessitore at FFGI and DILLON asking whether DILLON had completed a "termite Section #1" for the Del Amo property. The Buyers were obtaining a VA loan to purchase the Del Amo property and the VA lender required a termite report and clearance with Section I clearance dated within 90 days of closing escrow.

22.

A few minutes later, at 4:37 p.m., Reyes sent a text to DILLON asking if DILLON had completed the termite clearance section #1. DILLON responded, "Yes."

23..

At 7:37 p.m. that same day, DILLON replied to Reyes' email stating "here is the termite." DILLON attached a wood destroying pest inspection report, Report No. W8664, dated March 15, 2018, by "All State Termite and Pest" in San Diego to Reyes, which stated, in part, the following:

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1 **Ordered by:** Realty Master and Associates Nick Dillon

2 **Inspected by:** Richard Morgan **State License No.** FR39819

3 **General Description:** Two story wood framed stucco single family residence with tile
4 roof and attached garage.

5 Section I contains items where there is evidence of active infestation, infection of
6 conditions that have resulted in or from infestation of infection. Section II items are
7 conditions deemed likely to lead to infestation or infection but where no visible
8 evidence of such was found...

9 NOTE: This is to certify that the above property is free of active infestation or infection
10 in all visible and accessible areas and meets all FHA/VA requirements. FINDINGS:

11 CLEAR \$ NO CLEARANCE FEE

12 **Substructure:** Slab

13 **Stall Shower:** Prefab

14 **Foundations:** Slab

15 **Porches – Steps:** Slab

16 **Ventilation:** NA

17 **Abutments:** None

18 **Attic Spaces:** Partially insulated

19 **Garages:** Slab

20 **Decks – Patios:** None

21 **Other Interior:** See Report

22 **Other Exterior:** See Report

23 24.

24 Page 2 of the termite report by “All State Termite and Pest” DILLON provided
25 to Reyes, listed the Del Amo property address, however, the notice at the bottom of the page
26 made reference to “All Phase Termite and Pest” instead of “All State Termite and Pest.” Pages
27 4 and 5 both referenced “All Phase Termite and Pest” instead of “All State Termite and Pest.”

1 28.

2 According to the California Department of Consumer Affairs, Structural Pest
3 Control Board, "All State Termite and Pest" has never been registered as a principal registered
4 company by the Structural Pest Control Board.

5 29.

6 Escrow closed on the second sale of the Del Amo property on or about June 19,
7 2018. All of the communication regarding the second Del Amo sale occurred between Reyes,
8 DILLON, and Linda Tessitore at FFGI. The negotiation occurred between Reyes and DILLON.
9 Reyes was not in contact with WHITMORE, the listing agent for the Del Amo property and the
10 designated officer for FFGI at the time escrow was opened.

11 30.

12 In or around November 2018, the Buyers in the second Del Amo transaction
13 discovered evidence of termites at the Del Amo property. The buyers paid for two independent
14 termite inspections, both of which confirmed an active infestation. The Del Amo property
15 required fumigation and repairs to the termite damage.

16 31.

17 As part of the Department's investigation into the fraudulent termite report
18 DILLON provided the Buyers in the second Del Amo transaction, the Department contacted
19 WHITMORE for information on the sale of the Del Amo property.

20 32.

21 WHITMORE, who purportedly executed the Residential Listing Agreement
22 with DILLON for the second sale of the Del Amo property, was not aware of the Del Amo
23 transaction and never had any contact with DILLON. WHITMORE, who was the designated
24 officer of FFGI at the time of the execution of the Residential Listing Agreement, never
25 reviewed any of the Del Amo transaction documents. Furthermore, WHITMORE, as the
26 designated officer of FFGI, never reviewed transactions files throughout his role as designated
27 officer and never visited the office. Employees of FFGI "DocuSigned" WHITMORE's name

1 on transaction documents, the discovery of which caused WHITMORE to resign as designated
2 officer of FFGI.

3 33.

4 Employees of FFGI "DocuSigned" WHITMORE's name on the Del Amo
5 transaction documents and other transactions, including but not limited to the following,
6 without WHITMORE's authority:

Property Address	Date of Purchase Agreement	Email associated with "DocuSigning"	IP Address of DocuSign
33285 Redbird Drive	4/28/2018	Megan@smartrealtygroup.com	172.113.81.240
18135 Camino de Estrellas	5/17/2018	Linda@smartrealtygroup.com	23.240.68.63
1152 Carrot Lane	7/14/2018	Linda@smartrealtygroup.com	23.240.68.63

11 (UNLICENSED ACTIVITY)

12 34.

13 Megan Whitmore ("Megan") is not now and has never been licensed by the
14 Department. Megan was an office manager for FFGI, and since May 22, 2018, Megan has been
15 employed as an assistant to LIN. Megan, while not licensed by the Department in any capacity,
16 performed real estate activity that required licensure by the Department. For an unknown
17 period of time, including April 2018 through March 2019, Megan engaged in the business of,
18 acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of
19 California within the meaning of Code section 10131(a), for or in expectation of compensation,
20 by negotiating the purchase, sale or exchange of real property.

21 33285 Redbird Drive Transaction

22 35.

23 On or about April 29, 2018, Chad Erickson ("Erickson"), a licensed salesperson
24 (license ID 01966322), submitted an offer on behalf of a buyer in the purchase of 33285
25 Redbird Drive, Yucaipa, California ("Redbird property"). WHITMORE was purportedly the
26 listing agent representing the seller. Erickson had no direct contact with WHITMORE.
27

1 Erickson's only contact for all matters pertaining to the transaction was Megan Whitmore.
2 Erickson sent via email an offer to purchase the Redbird property to the email address
3 offers1@smartrealtygroup.com.

4 36.

5 On or about May 1, 2018, Megan sent an email to Erickson that stated, "Thank
6 you for taking my call, per our conversation please find the attached SMCO."

7 37.

8 On or about May 2, 2018, in an email to escrow, Megan stated in part, "My
9 name is Megan Whitmore and I will be assisting Jason Whitmore during this transaction."

10 WHITMORE never reviewed this transaction file.

11 38.

12 On or about May 31, 2018, Megan sent an email to Erickson that stated, "my
13 seller mentioned your commission (which we briefly discussed); is this something you
14 discussed with my seller to off-set the appraisal and also closing costs [sic]." WHITMORE was
15 not copied to the email.

16 4420 Portola Avenue Transaction

17 39.

18 On or about January 20, 2019, Herbert Flores ("Flores"), a licensed salesperson
19 (license ID 02041987), submitted an offer on behalf of a buyer in the purchase of 4420 Portola
20 Avenue, Los Angeles, California ("Portola property"). LIN was the listing agent representing
21 the seller. Flores had no direct contact with LIN. Flores' only contact for all matters pertaining
22 to the transaction was Megan Whitmore. Flores sent via email an offer to purchase the Portola
23 property to the email address offers1@smartrealtygroup.com.

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1 40.

2 On or about January 23, 2019, in response to Flores' emailed inquiry as to the
3 status of his client's offer, Megan responded, "Yes I spoke to my seller late yesterday-please
4 see the attached SCO #1." Flores negotiated the offer directly with Megan. LIN was not copied
5 on the email.

6 2900 Fernvale Road Transaction

7 41.

8 On or about March 6, 2019, Dalia Beckman ("Beckman"), a licensed
9 salesperson (license ID 01979065), submitted an offer on behalf of a buyer in the purchase of
10 2900 Fernvale Road, Bakersfield, California ("Fernvale property"). LIN was the listing agent
11 representing C.S., the seller. Beckman had no contact with LIN. Beckman's main contact for
12 the transaction was Megan Whitmore. Beckman sent via email a "contingent offer" to the email
13 address offers1@smartrealtygroup.com listed in the MLS listing for the Fernvale property.

14 42.

15 On or about March 7, 2019, in response to Beckman's emailed offer, Megan
16 replied, "Thank you for your clients' interest and offer on our listing on Fernvale. I will review
17 and discuss with our seller and get back to you."

18 43.

19 Later that same day, March 7, 2019, Megan sent an email to Beckman that
20 stated, "I spoke to our seller regarding your offer. We have had a lot of showings and a lot of
21 interest. Also, being the fact that we just came on the market he would like to wait until next
22 week to review and discuss the offers. We will keep you posted once we have had an
23 opportunity to review and discuss." LIN was not copied to Megan's email to Beckman.

24 44.

25 Megan presented all the offers to C.S., the seller of the Fernvale property.
26 Megan, not LIN, discussed the terms of the offers and terms of the counteroffers with C.S.

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1 (FRAUD OR DISHONEST DEALING)

2 45.

3 The conduct, acts and/or omissions of Respondent DILLON, as described in
4 Paragraphs 13 through 30 above, constitute fraud or dishonest dealing and are cause for the
5 suspension or revocation of the license and license rights of Respondent DILLON under Code
6 section 10177(j).

7 46.

8 The conduct, acts and/or omissions of Respondent FFGI, as described in
9 Paragraphs 11, 29, and 32-38, constitute fraud and dishonest dealing and are cause for the
10 suspension or revocation of the license and license rights of Respondent FFGI under Code
11 sections 10176(i) and/or 10177(j).

12 47.

13 The conduct, acts and/or omissions of Respondent LIN, as described in
14 Paragraphs 29 and 32-38, constitute fraud and dishonest dealing and are cause for the
15 suspension or revocation of the license and license rights of Respondent LIN under Code
16 section 10176(i) and/or 10177(j).

17 (MISREPRESENTATION)

18 48.

19 The conduct, acts and/or omissions of Respondent DILLON, as described in
20 Paragraphs 13 through 30 above, constitute a substantial misrepresentation and are cause for
21 the suspension or revocation of the license and license rights of Respondent DILLON under
22 Code section 10176(a).

23 49.

24 The conduct, acts and/or omissions of Respondent FFGI, as described in
25 Paragraphs 11, 29 and 32-38, constitute a substantial misrepresentation and are cause for the
26 suspension or revocation of the license and license rights of Respondent FFGI under Code
27 section 10176(a).

1 50.

2 The conduct, acts and/or omissions of Respondent LIN, as described in
3 Paragraphs 29, 32-38, constitute a substantial misrepresentation and are cause for the
4 suspension or revocation of the license and license rights of Respondent LIN under Code
5 section 10176(a).

6 (FAILURE TO SUPERVISE)

7 50.

8 Based on the conduct, acts and/or omissions of as described in Paragraphs 11,
9 29, and 32-37, Respondent WHITMORE did not exercise adequate supervision over the
10 activities of Respondent FFGI's employees to ensure compliance with the Real Estate Laws
11 and Regulations in violation of Code sections 10177(h) and 10159.2. Respondent WHITMORE
12 failed to establish and/or implement policies, rules, procedures and system to review, oversee,
13 inspect and manage transactions requiring a real estate in violation of Regulations section 2725.

14 51.

15 Based on the conduct, acts and/or omissions of as described in Paragraphs 29,
16 and 32-44, Respondent LIN did not exercise adequate supervision over the activities of
17 Respondent FFGI's employees to ensure compliance with the Real Estate Laws and
18 Regulations in violation of Code sections 10177(h) and 10159.2. Respondent LIN failed to
19 establish and/or implement policies, rules, procedures and system to review, oversee, inspect
20 and manage transactions requiring a real estate in violation of Regulations section 2725.

21 (UNLAWFUL EMPLOYMENT OR PAYMENT OF COMPENSATION)

22 52.

23 Based on the conduct, acts and/or omissions as described in Paragraphs 11, 29,
24 32-44 above, Respondent FFGI employed or compensated, directly or indirectly, Megan
25 Whitmore, who at the time was not licensed by the Department, for performing acts that require
26 a real estate license in violation of Code section 10137.

27 ///

1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of
2 this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all the licenses and/or license rights of Respondents NICHOLAS KENT
4 DILLON II, FLAT FEE GROUP, INC., doing business as Smart Realty Group, JASON
5 WHITMORE, individually and as former designated officer of Flat Fee Group, Inc., and
6 MICHELLE JENNY LIN, individually and as designated officer of Flat Fee Group, Inc., under
7 the Real Estate Law, for the costs of investigation and enforcement as permitted by law and for
8 such other and further relief as may be proper under other applicable provisions of law.

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10 Dated at San Diego, California this 19 day of October, 2020.

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14 _____
15 Veronica Kilpatrick
16 Supervising Special Investigator
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23 cc: NICHOLAS KENT DILLON II
24 FLAT FEE GROUP, INC.
25 JASON WHITMORE
26 MICHELLE JENNY LIN
27 Realty Masters & Associates Inc
Veronica Kilpatrick
Sacto.